

304.39-060 Acceptance or rejection of partial abolition of tort liability -- Exceptions.

- (1) Any person who registers, operates, maintains or uses a motor vehicle on the public roadways of this Commonwealth shall, as a condition of such registration, operation, maintenance or use of such motor vehicle and use of the public roadways, be deemed to have accepted the provisions of this subtitle, and in particular those provisions which are contained in this section.
- (2)
 - (a) Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor, or that would be payable but for any deductible authorized by this subtitle, under any insurance policy or other method of security complying with the requirements of this subtitle, except to the extent noneconomic detriment qualifies under paragraph (b) of this subsection.
 - (b) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required in this subtitle, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000).
 - (c) Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.
- (3) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of harm.
- (4) Any person may refuse to consent to the limitations of his tort rights and liabilities as contained in this section. Such rejection must be in writing in a form to be prescribed by the Office of Insurance and must have been executed and filed with the office at a time prior to any motor vehicle accident for which such rejection is to

apply. Such rejection form together with a reasonable explanation thereof shall be furnished by the reparation obligor with each policy to each prospective insurance applicant. Such rejection form shall affirmatively state in bold print that acceptance of this form of insurance denies the applicant the right to sue a negligent motorist unless certain requirements contained in the policy of insurance are met. Rejection by a person who is under legal disability shall be made on behalf of such person by his legal guardian, conservator or his natural parent. The failure of such guardian or a natural parent of a person under legal disability to file a rejection, within six (6) months from the date that this subtitle would otherwise become applicable to such person, shall be deemed to be an affirmative acceptance of all provisions of this subtitle. Provided, however, any person who, at the time of an accident, does not have basic reparation insurance but has not formally rejected such limitations of his tort rights and liabilities and has at such time in effect security equivalent to that required by KRS 304.39-110 shall be deemed to have fully rejected such limitations within meaning of this section for that accident only.

- (5)
 - (a) Any rejection must be filed with the Office of Insurance and shall become effective on the date of its filing until revoked;
 - (b) Any rejection filed prior to June 30, 1980, shall be deemed to be effective from the date of its filing until revoked; and
 - (c) Any revocation shall be in writing and shall become effective upon the date of its filing with the Office of Insurance.
- (6) Every insurance company when issuing an automobile policy to a resident of this Commonwealth must inform the buyer in writing in a form to be prescribed by the insurance executive director of his right to reject the limitations of his tort rights and liabilities under this subtitle in the manner provided in subsections (4) and (7) of this section.
- (7) Any rejection shall result in the full retention by the individual of his tort rights and his tort liabilities. Any person injured by a motor vehicle operator who has such rejection on file may claim his full damages, including nonpecuniary damages, or, if such injured person has not rejected his own tort limitations, he may also claim basic reparation benefits from the appropriate security on the vehicle as established under KRS 304.39-050. If such provider of security is other than the one providing security for the operator who has rejected the limitations, such provider shall be subrogated to the rights of the injured person to the extent of reparation benefits paid against the owner and operator of the vehicle.
- (8) No person who has rejected the tort limitations under this section, except as provided in subsection (9) of this section or KRS 304.39-140(5), may collect basic reparation benefits.
- (9) Any owner or operator of a motorcycle, as defined in Kentucky Revised Statutes, may file a rejection as described in subsections (4) and (5) of this section, which will apply solely to the ownership and operation of a motorcycle but will not apply to injury resulting from the ownership, operation or use of any other type of motor vehicle.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 37, sec. 1, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 364, sec. 1, effective July 15, 1980. -- Amended 1976 Ky. Acts ch. 75, sec. 2, effective March 29, 1976. -- Created 1974 Ky. Acts ch. 385, sec. 6, effective July 1, 1975.

Note: 1980 Ky. Acts ch. 396, sec. 92 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.